

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

M.D. and T.D., on behalf of C.D.,

Plaintiffs-Appellants

-against-

New York City Department of Education,
Region 9 (District 2)

Defendant-Respondent.

07 Civ. 7967 (RMB)

NOTICE OF MOTION FOR MODIFIED *DE NOVO* REVIEW

PLEASE TAKE NOTICE, that upon the pleadings, the June 14, 2007 Decision of State Review Officer (“SRO”) Paul F. Kelly, Application of a Child with a Disability, Appeal No. 07-030, the February 28, 2007 Findings of Fact and Decision of Impartial Hearing Officer (“IHO”) Veronica C. Odom, Esq., the documentary evidence and the sworn testimony adduced during the underlying hearing and submitted herein pursuant to the Individuals with Disabilities Education Improvement Act’s (“IDEIA”) provision allowing for “additional evidence”, 20 U.S.C. § 1415(i)(2)(C), and upon all of the evidence, submissions and other matters considered by the SRO and the IHO, plaintiffs move:

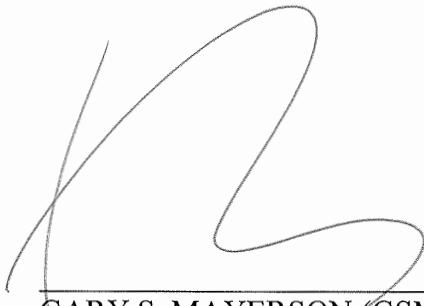
(a) a modified *de novo* review and adjudication pursuant to the IDEIA, 20 U.S.C. § 1400 et. seq., reversing the SRO’s June 14, 2007 Decision (except insofar as that decision ordered enforcement of C.D.’s pendency entitlements), as well as reversing the IHO’s February 28, 2007 Findings of Fact and Decision, and declaring that, procedurally and/or substantively, defendant-respondent failed to provide C.D. with a free and

appropriate public education for the 2006-2007 school year and the Summer of 2007;

- (b) a declaration that C.D.'s unilateral program and placement for the same time frame were appropriate and reimbursable, and that the equities favor reimbursement;
- (c) an order that defendant-respondent reimburse shall plaintiffs-appellants for the entire costs and expenses of C.D.'s unilateral program and placement (including tuition at the ELIJA School; 12 hours per week of home- and community-based ABA services on a 52 week basis [to the extent, if any, that defendant-respondent has not already issued any reimbursement as part of C.D.'s pendency]); and transportation between the ELIJA School and C.D.'s home;
- (d) a declaration that plaintiffs-appellants are the "prevailing party", for purposes of the IDEIA's fee-shifting provision;
- (e) granting leave to plaintiffs-appellants' counsel to submit a fee application; and
- (f) granting plaintiffs-appellants such other, further and different relief as may be just and appropriate under the circumstances.

PLEASE TAKE FURTHER NOTICE, that pursuant to this Court's Scheduling Order, defendant-respondent's opposing papers, if any, are due to be served on or before January 21, 2008; plaintiff-appellants' reply, if any, is due to be served on or before February 8, 2008; and defendant-respondent's sur-reply, if any, is due to be served on or before February 28, 2008.

Dated: New York, New York
December 21, 2007



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